IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA No.949 of 1985

DATE OF DECISION: 11.7.2007

State of Haryana and others ...APPELLANTS

VERSUS

Ishwar Dass Mittal and others ...RESPONDENTS

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.M.S.Sindhu, DAG, Haryana
for the appellants

Mr.C.B.Goel, Advocate with
Mr.Sunil Polist, Advocate for the respondents

PERMOD KOHLI,J. (ORAL)

I am at pain to see that the suit filed in the year 1977 for recovery of Rs.6000/- had reached this Court and is pending for the last 30 years. It is such a long pendency which tends to shake the faith of a common litigant in the justice delivery system. Looking to the nature of relief claimed, the suit should not have been contested

or at least some efforts should have been made on behalf of the State to settle/negotiate the claim. But a perusal of the record shows that the State seriously contested the suit for recovery of Rs.6000/- filed by the plaintiff/respondent by filing appeal before the First Appellate Court and thereafter the present Regular Second Appeal. Such an approach of the State deserves no appreciation. But the courts of law sometimes are hapless being regulated by bounds of law. Sometimes the legal wrangles come in the way of the court in doing substantial justice, particularly, on the civil side of the litigation. It is in this background, I am proceeding to deal with this appeal.

Admittedly, no substantial question of law was framed at the time of admission of appeal. However, from the facts on record, and with the assistance of the counsel for the parties, I frame following substantial question of law involved in this Regular Second Appeal :-

> "Whether an appeal without the certified copy of the decree-sheet not prepared by the trial court is incompetent?"

This Regular Second Appeal has been directed against the judgment and decree dated 7.12.1984 passed by the Additional District Judge, Ambala dismissing the appeal of the State against the judgments and decrees dated 9.8.1982 and 27.8.1982 passed by the Senior Sub Judge, Ambala City. I may briefly notice the factual background of the present case.

The respondent/plaintiff filed a suit for recovery of Rs.6000/-

in the Court of Senior Sub Judge, Ambala against the State of Haryana, on 16.7.1977. The suit appears to have been seriously contested by the State Appellant. However, the State failed to produce the evidence despite imposition of certain costs. On its failure to do so, the trial court vide its order dated 9.8.1982 struck off the defence of the defendant/State and consequently passed a decree for recovery against defendants no.1 to 3 who are the appellants before this Court. There was another defendant no.4. The suit was proceeded against the said defendant and came to be dismissed on 27.8.1982. When the suit was decreed against the present appellants on 9.8.1982, the order does not speak of drawing a decree-sheet. When the suit was finally dismissed against defendant no.4 on 27.8.1982, the Court proceeded to pass the following judgment:-

> "11. As a result of my findings above, the suit of the plaintiff for the recovery of Rs.6000/- against defendant no.4 is dismissed. However, the suit against defendants no.1 to 3 has already been decreed for the recovery of Rs.6000/- with costs on 9.8.1982 and that finding is confirmed. Decree sheet be drawn and the file be consigned to the record room.
>
> Pronounced
>
> Dated: 27.8.1982 sd/-Senior Sub Judge
> Ambala"

The State/appellants preferred an appeal under Section 96 of the CPC against both the judgments dated 9.8.1982 and 27.8.1982

in the Court of Additional District Judge, Ambala. Besides filing the copies of both the impugned judgments, copy of a decree-sheet prepared by the trial court on the basis of the second judgment dated 27.8.1982 was also filed. On an objection being raised by the decree-holder before the First Appellate Court regarding the maintainability of the appeal for non-filing of the copy of the decree-sheet in respect of the order dated 9.8.1982, the First Appellate Court dismissed the appeal. The First Appellate Court observed that non-filing of the decree-sheet in respect of the first judgment dated 9.8.1982 is vital and the appeal is incompetent. It is against this judgment dated 7.12.1984 passed by the Additional District Judge, Ambala, the appellants/State filed this Regular Second Appeal before this Court.

Learned counsel for the parties have been heard on the above substantial question of law. From perusal of the record of the trial court as also of the First Appellate Court, I find that though the suit was decreed on 9.8.1982, but no decree-sheet was prepared. The trial court while decreeing the suit finally on 27.8.1982 did prepare a decree-sheet and certified copy of the same was annexed with the memo of appeal before the First Appellate Court. In view of this fact which has not been considered by the First Appellate Court, the judgment impugned herein is not sustainable in law. At the first place, if a decree-sheet is not prepared at all by the trial court, the last part of the judgment is to be taken as a decree in terms of Order 20 Rule 6 A of the CPC and the non-filing of decree-sheet (not prepared) does not render the appeal incompetent. The finding of

the First Appellate Court is thus erroneous in law. There is another aspect of the matter. When the suit came to be disposed of finally on 27.8.1982, the trial court while dismissing the suit against defendant no.4 confirmed its earlier findings recorded in the judgment dated 9.8.1982. This fact not only finds mention in the judgment, but also incorporated in the decree-sheet prepared by the trial court in respect of its judgment dated 27.8.1982. Under these circumstances, the judgment dated 9.8.1982 can also be said to have merged in the final judgment dated 27.8.1982 for which a decree-sheet had been prepared and filed before the First Appellate Court. There was no infirmity insofar as filing of the First appeal is concerned.

Under the above circumstances, I allow this Regular Second Appeal and remand the case to the First Appellate Court to decide the appeal on its merits within two months from the date of appearance of the parties. Parties are directed to appear before the Additional District Judge, Ambala on 31.8.2007.

(PERMOD KOHLI)
JUDGE

11.7.2007
MFK

Note:Whether to be referred to Reporter or not:YES/NO